

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
SEABOARD FOODS LP,)	Civil No.
)	
Defendant.)	
)	

CONSENT DECREE

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Appendices:

Appendix A:

Seaboard Foods' Farms Subject to Certain Construction Stormwater Provisions of this
Consent Decree

Appendix B:

Seaboard Foods' Farms Subject to Certain CERCLA and EPCRA Provisions of this
Consent Decree

Appendix C:

Construction Storm Water Remedies and Requirements

Appendix D:

Buffer Zone Requirements

Appendix E:

Agri-Waste Technologies Maps

Whereas the United States of America (the “United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), has filed a complaint alleging that the Defendant Seaboard Foods LP (“Defendant” or “Seaboard Foods”) violated the reporting requirements of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the construction storm water and other discharge requirements of the Clean Water Act, 33 U.S.C. §§ 1251-1331, and certain requirements of the Clean Air Act, 42 U.S.C. § § 7401 et seq., including by failing to comply with an administrative monitoring request issued by EPA under section 114 of the Clean Air Act, 42 U.S.C. § 7414, in the construction and/or operation of a number of its animal feeding operations, including a number of such operations found in the Western District of Oklahoma;

Whereas Defendant has certified to EPA that it has complied with the potentially applicable requirements set forth in section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and section 304 of EPCRA, 42 U.S.C. § 11004, to report continuous releases of air emissions from the Seaboard Foods facilities listed in Appendix B to this Consent Decree;

Whereas Defendant does not admit any liability to the United States arising out of the actions, inactions, transactions or occurrences alleged in the Complaint;

Whereas Defendant contests the factual and legal basis for these allegations, as well as the existence of any contamination resulting from Defendant’s activities;

Whereas the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1345, and 1355 and also has personal jurisdiction over the Parties.

Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a) because Defendant has conducted business in this judicial district and some of the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

2. Only for purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted.

3. Notice of the commencement of this action has been given, in writing, to the State of Oklahoma.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successor or other entities otherwise bound by law.

5. No transfer of ownership or operation of any Seaboard Foods facility subject to this Decree, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations of this Decree and to be substituted for the Defendant as a Party under the Decree and be thus bound by the terms thereof, and (2) the United States consents to relieve Defendant of its obligations. On or before such transfer, Defendant Seaboard Foods shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA Region 6 and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices and

Submittals). Any attempt to transfer ownership or operation of any Seaboard Foods facility subject to this Decree without complying with this Paragraph constitutes a violation of this Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers and supervisory employees of the Defendant or its agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, or in regulations promulgated pursuant to these Acts, shall have the meanings assigned to them in the Act or in associated regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "AFO Air Compliance Agreement" shall mean the Animal Feeding Operation Air Quality Compliance Agreement announced by EPA on January 31, 2005 at 70 Fed. Reg. 4958 (Jan. 31, 2005);

b. "Complaint" shall mean the complaint filed by the United States in this action;

c. "Consent Decree" or "Decree" shall mean this Decree and all Appendices attached hereto (listed in Section XXI (Integration / Appendices)), and any and all work plans required by the Decree and approved by EPA in conformance with the Decree;

d. “Construction General Permit” shall mean the permit issued by EPA and published at 68 Fed. Reg. 39087-39091 (July 1, 2003), and any amendments thereto, or any permit governing stormwater discharges from construction activities issued by a state authorized pursuant to 33 U.S.C. § 1342(b) and the regulations implementing that provision.

e. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day of the computed period falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day;

f. “Defendant” shall mean Seaboard Foods LP;

g. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

h. “Facility” and “Facilities” shall mean Defendant’s farms, as identified in this Consent Decree, including the Appendices attached hereto;

i. “Farm” and “Farms” shall have the same meaning as “Facility” and “Facilities”;

j. “Monitoring Request” shall mean the Clean Air Act administrative monitoring request issued by EPA to Defendant on April 2, 2002, directing Defendant to undertake, complete, and report upon the monitoring, measuring, and estimating of air pollutants identified by the Monitoring Request, in the manner directed by that Request;

k. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

l. “Parties” shall mean the United States and the Defendant;

m. “Point Intercept Method” shall mean the method described in Sampling Vegetation Attributes: A Technical Reference, Tech. Ref. No. 1734-4 (DOI Bureau of Land Management, 1999), pages 78-85.

n. “Section” shall mean a portion of this Decree identified by a Roman numeral;

o. “Seed” shall refer to the process of seeding to encourage germination and plant growth in an area that has little or no vegetative cover. The term “overseed” shall refer to the process of seeding in an area that already has vegetative cover, but has not reached 70 percent perennial vegetative coverage relative to native background coverage. The term “reseed” shall refer to the process of seeding in an area which Seaboard Foods has previously tried to seed, but failed to establish 70 percent vegetative cover.

p. “United States” shall mean the United States of America, acting on behalf of the U.S. Environmental Protection Agency.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$205,000 as a civil penalty, of which \$100,000 may be satisfied by proof of payment under the AFO Air Compliance Agreement. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be timely provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Oklahoma. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07570 and the civil action number of this case) to the United States in accordance with Section XIII of this Decree (Notices and Submittals).

10. Failure to timely pay the civil penalty shall subject Defendant to interest accruing from the date payment is due until the date payment is made, or until the 15th day after payment is due, whichever occurs first, at the rate prescribed by 28 U.S.C. § 1961, and shall render Defendant liable for all charges, costs, fees, and penalties established by law for the benefit of a

creditor or of the United States in securing payment. Failure to pay the civil penalty for more than fourteen days after it is due shall subject Defendant to the stipulated penalty set forth in Paragraph 16(a).

11. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

V. PERFORMANCE REQUIREMENTS

12. Storm Water Requirements. Defendant must timely undertake and complete all requirements specified in Appendix C, entitled “Construction Storm Water Remedies and Requirements.”

13. Buffer Zone Requirements. Defendant must timely undertake and complete all actions specified in Appendix D, entitled “Buffer Zone Requirements.”

VI. REPORTING REQUIREMENTS

14. No later than ninety (90) days after entry of this Decree, and continuing on an annual basis on or before January 31 of each year thereafter regarding the previous calendar year, Defendant shall submit a report to the United States that shall include:

- a. a listing of each Decree requirement that Defendant was to commence, complete, or undertake during the reporting period, including a citation to the relevant Consent Decree provision;
- b. a brief summary of the activities Defendant has undertaken pursuant to each such requirement; and
- c. the deadline for completion of each such requirement and the date Defendant claims to have satisfied such requirement, if applicable.

15. In addition to the report required pursuant to Paragraph 14, Defendant shall

submit a written report to the United States of any violation of the requirements of this Consent Decree within ten (10) business days of when Defendant knew of any such violation. In this report, Defendant shall explain the cause or causes of the violation and all measures taken or to be taken by the Defendant to prevent such violations in the future.

VII. STIPULATED PENALTIES

16. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes Defendant's failing to comply with any requirement, term, standard, or schedule established by or covered by Sections IV, V, VI, or X of this Decree.

<u>Consent Decree Violation</u>	<u>Stipulated Penalty (per day, per violation, unless otherwise noted)</u>
(a) Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree for more than 14 days after the due date	\$5,000 per day beginning the 15 th day after the due date
(b) Failure to timely apply for coverage under the Construction General Permit, as required by Appendix C, Section I	\$500
(c) Failure to timely complete any of the tasks specified in Appendix C, Section II	\$500 per day per violation for the first 30 days; \$1000 per day per violation thereafter
(d) Failure to timely comply with any requirement (except for buffer zone maintenance) set forth in Appendix D	\$500 per day per violation for the first 30 days; \$1000 per day per violation thereafter
(e) Failure to take reasonable steps to maintain a buffer zone, as required by Appendix D	\$250 per day per buffer zone for the first 30 days; \$500 per day per buffer zone for the next 30 days; \$1,000 per day per buffer zone thereafter
(f) Failure to timely submit any report or other submittal required by this Consent Decree	\$250 per day per violation for the first 14 days; 500 per day per violation for the next 14 days; 1,000 per day per violation thereafter
(g) Failure to provide splits of samples upon EPA's request, as required by Paragraph 35	\$250 per sample

(h) Failure to provide access to EPA or its authorized representatives to any facility covered by this Decree, as required by Section X	\$500 per day (until the day on which Defendant notifies EPA that access is granted)
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17. Except as otherwise specified above, stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand, subject to the provisions of Section IX (Dispute Resolution).

18. Unless otherwise provided in this Consent Decree, stipulated penalties shall continue to accrue as provided in Paragraph 16 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- a. If the dispute is resolved by agreement, or by a decision of EPA pursuant to Section IX (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of EPA's decision;
- b. If the dispute is appealed to the Court and EPA prevails in whole or in part, Defendant shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph 18(c);

c. If the Court's decision is appealed by any Party, Defendant shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

19. All stipulated penalties shall be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree.

20. If Defendant fails to pay stipulated penalties in compliance with the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

21. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

22. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to EPA by reason of Defendant's failure to comply with any requirement of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of statutory or regulatory requirements, Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

23. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

24. Defendant shall provide notice to EPA orally or by electronic or facsimile transmission as soon as possible, but not later than five (5) days after the time Defendant first knew, or should have known, of a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XIII of this Consent Decree (Notices and Submittals), within twenty-one (21) days of the time Defendant first knew, or should have known, of the event. The written notice shall state: the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

25. If the United States agrees that a force majeure event has occurred, the time for the performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for such time as is necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification can be made only pursuant to Section XVI of this Consent Decree (Modification).

26. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 24; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any

delay caused by the event.

IX. DISPUTE RESOLUTION

27. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Party.

28. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Party advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice, or at a later time by mutual agreement of the Parties.

29. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives, provided that the Parties may agree in writing to shorten or extend this period.

30. If the disputing Parties are unable to reach agreement during the informal negotiation period, the United States shall provide Seaboard Foods with a written summary of its position regarding the dispute. The written position provided by the United States shall be considered binding unless, within forty-five (45) calendar days thereafter, Seaboard Foods seeks judicial resolution of the dispute by filing a petition with the Court. The United States may respond to the petition within forty-five (45) calendar days of filing.

31. Where the nature of the dispute is such that a more timely resolution of the issue

is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

32. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree that is not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 18, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

33. After the resolution of any dispute under this Section, nothing prohibits either Party from seeking Court approval to modify this Consent Decree, in appropriate circumstances, so as to extend the schedule or deadlines for the completion of required activities that were the subject of dispute resolution. Where this Court enters such an extension or schedule modification, Defendant shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule, provided that they shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

34. In any dispute under this Section, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that Defendant is entitled to relief. The Parties reserve their rights to argue their respective positions as to the standard of review applicable to the particular dispute at issue.

X. INFORMATION COLLECTION AND RETENTION

35. During the pendency of this Decree, the United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility

covered by this Consent Decree, at all reasonable times, upon presentation of credentials and in conformance with any reasonable biosecurity requirements of the Facility, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. independently obtain samples and conduct such tests as the United States deems necessary to assess Defendant's performance under this Decree and, upon request, splits of any samples taken pursuant to this Decree by Defendant or its representative, contractors, or consultants;
- d. obtain documentary evidence relevant to performance under this Decree, including photographs and similar data using a camera, video camcorder, sound recorder, or other similar documentary type equipment;
- e. interview site personnel and contractors; inspect records, operating logs, and contracts related to the Defendant's performance under this Decree; and
- f. otherwise assess Defendant's compliance with this Consent Decree.

If Defendant denies access to any farm or facility on the basis of biosecurity requirements, EPA may request a written justification of such denial from Seaboard Foods' Director of Environmental Affairs or, if such person cannot be reached, from Seaboard Foods' Director of Environmental, Maintenance and Construction, and Seaboard Foods shall provide such justification by electronic mail and, if requested by EPA, also by facsimile (electronic mail address and facsimile number to be provided by EPA at the time of the request) within 12 hours of receipt of EPA's request.

36. Upon request, Defendant shall provide EPA or its authorized representatives

splits of any samples taken by Defendant pursuant to this Decree. Upon request, EPA shall provide Defendant splits of any samples taken by EPA pursuant to this Decree.

37. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records, documents, or other information (including documents, records or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Defendant's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

38. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XI. COVENANT NOT TO SUE / RESERVATION OF RIGHTS

39. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Decree, and except as specifically provided below, the United States covenants not to sue or take administrative action against Seaboard Foods concerning:

- a. the violations the United States specifically alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree;

- b. the civil claims of the United States under section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), against Defendant Seaboard for the discharge of pollutants without first obtaining coverage pursuant to the Construction General Permit, in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311, at the farms listed in Appendix A, through the date of lodging;
- c. the civil claims of the United States under section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), against Defendant Seaboard for discharging pollutants in the course of the land application of effluent without a permit in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311, at the following farms, through the date of lodging:
- Choate (Farms 65, 154, and 439)
 - Stewart Nurseries (Farms 150 and 151)
 - Payne/Stewart Finishers (Farms 420-423)
 - Bryan Sow and Norris (Farms 62 and 436)
 - Best Nurseries 1 & 2 (Farms 152 & 153)
 - Watson Finisher (Farm 424)
 - Grimes Finisher (Farm 425)
 - Barr Finisher (Farm 435)
 - Brown Sow (Farm 61)
- d. the civil claims of the United States under section 109(c) of CERCLA, 42 U.S.C. § 9609(c), and section 325 of EPCRA, 42 U.S.C. § 11045, through the date of lodging, for Defendant Seaboard's failure to notify the National Response Center of certain releases of a hazardous substance, in violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and for Seaboard's failure to notify the state emergency response commissions and local emergency planning committees, in violation of Section 304 of EPCRA, 42 U.S.C. § 11004, at each of the facilities listed in Appendix B; and

- e. the civil claims of the United States under section 113(b) of the CAA, 42 U.S.C. § 7413(b), for violating section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), by failing to comply with the CAA § 114 Air Monitoring Request EPA issued to Seaboard on April 2, 2002.

40. Entry of this Consent Decree also withdraws the CAA § 114 Air Monitoring Request EPA issued to Seaboard Farms, Inc. (now Seaboard Foods LP) and Mission Funding, LLC on April 2, 2002.

41. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under federal or state laws, regulations, or permit conditions, except as expressly specified herein.

42. Defendant is responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local law or regulation. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with the law.

43. This Consent Decree does not limit or affect the rights of the Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

44. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

45. The United States reserves all legal and equitable remedies available to enforce

the provisions of this Consent Decree, except as expressly stated herein.

XII. COSTS / FEES

46. All Parties shall bear their own costs and fees of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any enforcement necessary to collect any portion of the Civil Penalty or, any Stipulated Penalties due but not paid by Defendant.

XIII. NOTICES AND SUBMITTALS

47. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07570

Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

and

Director, Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 900
Dallas, Texas 75202-2733

As to Defendant:

Jennifer Charno Nelson
Director of Environmental Affairs

Seaboard Foods LP
9000 W. 67th Street, Suite 200
Shawnee Mission, Kansas 66202

David Becker
Vice President and General Counsel
Seaboard Corporation
9000 W. 67th Street, Suite 300
Shawnee Mission, Kansas 66202

Richard Schwartz
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

48. All reports, notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; or (b) certified or registered mail, return receipt requested. Such reports, notifications, communications or submissions may also be sent by electronic mail. All reports, notifications, communications and submissions (a) sent by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked; or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

49. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

50. Defendant shall submit each plan, report, or other submission to EPA whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. The United States may approve the submittal or decline to approve it and provide written comments. Unless otherwise provided, within sixty (60) days of receiving written comments from the United States, Defendant shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to the United States,

or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section IX (Dispute Resolution) of this Consent Decree.

51. Upon receipt of the United States' final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Defendant shall implement the approved submittal in accordance with the schedule specified therein.

52. In all instances wherein this Decree requires written submissions to EPA, each submission shall be signed and certified as follows by a duly authorized representative of the Defendant; provided that annual reports, requests for termination of any Appendix or this Consent Decree, and the 21-day written notice of a force majeure event required by Paragraph 24 shall be signed and certified as follows by an official of the Defendant:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

Any submissions made pursuant to Section IX (Dispute Resolution) may be signed by an attorney representing the Defendant, and, if so signed, need not be certified.

XIV. EFFECTIVE DATE

53. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XV. RETENTION OF JURISDICTION

54. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification or adjudication of disputes. During the term of this Consent Decree, either Party to this Consent

Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XVI. MODIFICATION

55. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

56. Once approved by EPA, any work plans required to be submitted pursuant to this Decree, including its Appendices, shall be incorporated by reference into this Decree.

XVII. GENERAL PROVISIONS

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Defendant's Facilities or Defendant's violations, Defendant shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were brought or should have been brought, in the instant case, provided, however, that nothing in this Paragraph is intended to affect the enforceability of Section XI (Effect of Settlement).

58. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

59. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

XVIII. TERMINATION

60. After Defendant has completed performance of all of its obligations under this Consent Decree, or all of its obligations under any single Appendix to this Consent Decree, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent

Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has completed performance of all those requirements, together with all necessary supporting documentation.

61. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has complied with the requirements for termination. If the United States agrees that the entire Decree (save any provisions of the Decree that survive termination) or a specified Appendix thereof, may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree in full (save any provisions of the Decree that survive termination), or a specified Appendix thereof.

62. If the United States does not agree that the Decree or the specified Appendix may be terminated, Defendant may move the Court for an Order terminating the full Decree or a specified Appendix thereof.

XIX. PUBLIC PARTICIPATION

63. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Defendant shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Defendant, in writing, that the United States no longer supports entry of the Consent Decree. Defendant consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES / SERVICE

64. The Order of the Environmental Appeals Board, Consent Agreement and Proposed Final Order for Animal Feeding Operations – Seaboard Foods LP (Aug. 21, 2006), provides, inter alia, that “the [Consent Agreement and Proposed Final Order] shall be null and void in its entirety on September 16, 2006, unless, prior to that date, the United States lodges in federal district court one or more proposed Consent Decrees that alone, or in combination, resolve alleged violations of RCRA, the Clean Air Act, the Clean Water Act, CERCLA and EPCRA, at Respondent’s Farms.” In light of this Order, the signatures of the authorized representative of the Defendant affixed hereto, and Defendant’s consent to be bound by this Consent Decree, are valid if and only if this Consent Decree is lodged in this Court no later than September 15, 2006.

65. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

67. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION / APPENDICES

68. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or

written, concerning the settlement embodied herein. No other document, representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Decree.

69. The following appendices are attached to and incorporated into this Consent Decree:

- a. “Appendix A” is entitled “Seaboard Foods’ Farms Subject to Certain Construction Stormwater Provisions of this Consent Decree”;
- b. “Appendix B” is entitled “Seaboard Foods’ Farms Subject to Certain CERCLA and EPCRA Provisions of this Consent Decree”;
- c. “Appendix C” is entitled “Construction Storm Water Remedies and Requirements”;
- d. “Appendix D” is entitled “Buffer Zone Requirements”;
- e. “Appendix E” is entitled “Agri-Waste Technologies Maps.”

XXII. FINAL JUDGMENT


70. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment in the above-captioned matter between the United States and the Defendant.


Dated and entered this ___ day of _____, 2006.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA:


/ SUE ELLEN WOOLDRIDGE /
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice
Washington, DC 20530



NICOLE VEILLEUX
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

JOHN C. RICHTER

United States Attorney for Western District of Oklahoma

/s/ Steven K. Mullins

STEVEN K. MULLINS, OBA #6504

Assistant United States Attorney

210 Park Avenue, Suite 400



Oklahoma City, OK 73102

405/553-8804

Steve.mullins@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):


 GENTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

RICHARD E. GREENE

Regional Administrator

U.S. Environmental Protection Agency - Region 6

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE DEFENDANT, Seaboard Foods LP:

9/11/06
Date

Rod K. Brenneman, President
Seaboard Foods LP

RCN

LEGAL REVIEW: *DMS*

Date

Richard Schwartz
Attorney for Seaboard Foods LP
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP, (W.D. Okla.).

FOR THE DEFENDANT, Seaboard Foods LP:

Date

Rod K. Brenneman, President
Seaboard Foods LP

Date

9/11/06

Richard Schwartz
Attorney for Seaboard Foods LP
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004